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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
8 **(HONORABLE IRMA E. GONZALEZ)**

9 UNITED STATES OF AMERICA,) CASE NO. 08CR0283-IEG
10)
Plaintiff,) DATE: September 16, 2008
11) TIME: 9:00 a.m.
v.)
12)
13 **FRANCISCO KELLY-PALMER,**) PROPOSED LIMITING INSTRUCTION
REGARDING ADMISSION OF ORDER
14 Defendant.) OF IMMIGRATION JUDGE AND
WARRANT OF REMOVAL
15 _____)

16 TO: KAREN P. HEWITT, UNITED STATES ATTORNEY, AND
17 STEWART YOUNG, ASSISTANT UNITED STATES ATTORNEY.

18 Mr. Kelly-Palmer, by and through his counsel, Sara Peloquin, and Federal Defenders of San
19 Diego, Inc., pursuant to Federal Rule of Evidence 105, requests that the Court provide the jury with
20 the following limiting instruction should the Government seek to admit the Order of Removal of
21 the Immigration Judge and the Warrant of Removal, as anticipated.

22
23 Respectfully submitted,

24 Dated: September 15, 2008

25 /s/ Sara M. Peloquin
SARA M. PELOQUIN
Federal Defenders of San Diego, Inc.
26 Attorneys for Mr. Kelly-Palmer
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1 DEFENDANT'S PROPOSED LIMITING INSTRUCTION REGARDING DEPORTATION
2 DOCUMENTS

3 The government has offered evidence that Mr. Kelly-Palmer was removed or deported from
4 the United States by order of an Immigration Judge. You may only consider this evidence to
5 establish the fact of removal or deportation. These documents do not establish that Mr. Kelly-
6 Palmer is an alien.

7 Authority:

8 **"Clearly it would be improper for the government to rely on factual findings from a**
9 **deportation hearing to prove an element of the crime of illegal reentry, as the burden**
10 **of proof in a criminal proceeding requires a greater showing by the government than**
11 **in an administrative hearing.** The use of a deportation order to prove the element of
12 alienage would allow the government to skirt around the more stringent requirements of a
13 criminal proceeding by relying on that factual finding from the INS proceeding. To put it
14 more simply, the government would demonstrate that Medina is an alien by showing that
15 the INS found that he was an alien." United States v. Medina, 236 F.3d 1028, 1030-31 (9th
16 Cir. 2001) (emphasis added).
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CERTIFICATE OF SERVICE

Counsel for Defendant certifies that the foregoing is true and accurate to the best information and belief, and that a copy of the foregoing document has been caused to be delivered this day upon:

Courtesy Copy to Chambers

Copy to Assistant U.S. Attorney via ECF NEF

Copy to Defendant

Dated: September 15, 2008

/s/ Sara M. Peloquin

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